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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Teleport Communications Group

**File:** B-277926.2

**Date:** September 17, 1998

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Attila A. Tota for the protester.

Paula Coombs for Pacific Bell, an intervenor.

Eva Escalante, Esq., Department of the Navy, for the agency.

John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Agency reasonably evaluated the protester's proposal for a network to meet certain telecommunications requirements as proposing a network not dedicated to the agency's exclusive use.

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## DECISION

Teleport Communications Group (TCG) protests the award of a contract to Pacific Bell under request for proposals (RFP) No. N00244-97-R-5197, issued by the Department of the Navy, for a network to meet the Navy's telecommunications requirements for the San Diego, California metropolitan area. TCG protests the evaluation of its proposal and selection of Pacific Bell's higher-priced proposal for award.

We deny the protest.

The RFP, issued on July 11, 1997, provided for the award of a fixed-price indefinite quantity contract for a 5-year performance period. The successful contractor under the RFP will be required "to provide a fully operational, heterogeneous transport vehicle for all voice, video and data transmissions necessary for conducting Navy business (plus any emergent Federal users) in the San Diego region." RFP amendment No. 0005 at 2. The RFP added here that "[t]his includes . . . the expansion of bandwidth at initial and expanded sites and the upgrade of technology as needs evolve."<sup>1</sup> Id. The RFP included a statement of objectives (SOO), which

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<sup>1</sup>Bandwidth is defined in the RFP, annex B at 1, as:

The range of frequencies, expressed in hertz (Hz), that can pass over a given transmission channel. The bandwidth determines the rate at which  
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set forth 15 general objectives which the offerors' proposals were to meet.<sup>2</sup> RFP attachment 1, revision 2. The agency explains that it chose this approach so that firms had "wide latitude to propose innovative ways of doing business and to employ creative problem solving to meet the Navy's requirements." Agency Report at 2-3.

The RFP stated that award would be made to the offeror submitting the offer determined to be most advantageous to the government, and listed the following evaluation factors in descending order of importance: (1) price; (2) technical capability; and (3) past performance. RFP amendment No. 0002 replacement pp. 14-15. The RFP added that technical capability and past performance were approximately equal in importance, and that technical capability and past performance combined were approximately equal in importance to price. Id.

The RFP set forth detailed instructions for the preparation of proposals. Specifically, the RFP required that proposals include, among other things, a statement of work (SOW) detailing how the offeror would meet each of the RFP's listed objectives, and a price proposal setting forth relevant contract line items. RFP amendment No. 0002 replacement p. 12. The RFP added that offerors were permitted to submit up to three technical approaches. Id. at 15.

The agency received seven proposals from four offerors by the RFP's closing date. The proposals were evaluated, discussions held, and best and final offers (BAFO) were requested, received, and evaluated. A second round of discussions was conducted, and revised BAFOs were requested and received.

In accordance with the source selection plan, each proposal was rated by the cognizant technical evaluation board (TEB) as to how well it demonstrated fulfillment of each of the RFP's 15 objectives. Each proposal also received an overall technical rating, past performance rating, and combined (technical capability

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<sup>1</sup>(...continued)

information can be transmitted through the circuit the greater the bandwidth, the more information that can be sent in a given amount of time.

<sup>2</sup>For example, objective (a) requested that the contractor:

Furnish a robust and reliable network that provides for open systems, interoperability, scalability, cost effectiveness and efficient transport of integrated voice, video and data. The provider to provider and switch to switch interfaces must not limit the Government to a non standards based solution.

and past performance) rating.<sup>3</sup> In this regard, Pacific Bell's technical proposal received ten highly satisfactory" and five "satisfactory" ratings, an overall technical rating of "highly satisfactory," a past performance rating of "satisfactory," and a combined proposal rating of "highly satisfactory," at a price of \$18,993,409. TCG's technical proposal received 2 "highly satisfactory" and 13 "satisfactory" ratings, an overall technical rating of "satisfactory," a past performance rating of "satisfactory," and a combined rating of "satisfactory," at a price of \$18,244,182.

The agency's best value decision focused on the superior elements of Pacific Bell's technical proposal, as evidenced by its "highly satisfactory" ratings, as well as the additional bandwidth provided for by Pacific Bell's proposed technical solution. The agency determined that the value of the superior elements of Pacific Bell's technical proposal, which could not be readily quantified, as well as the additional bandwidth, valued by the agency as worth approximately \$2.3 million, more than offset TCG's proposal's price advantage. The agency subsequently awarded a contract under the RFP to Pacific Bell as the offeror whose proposal was determined to be most advantageous to the government.

TCG, after requesting and receiving a debriefing, which according to TCG included "an explanation of our network design differences versus our competitor, Pacific Bell," filed this protest. Protest at 2.

TCG protests that the agency's evaluation of its technical proposal was unreasonable. The evaluation of technical proposals is a matter within the discretion of the contracting agency since the agency is responsible for defining its needs and the best method of accommodating them. Marine Animal Prods. Int'l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16 at 5. In reviewing an agency's evaluation, we will not reevaluate technical proposals, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria. MAR, Inc., B-246889, Apr. 14, 1992, 92-1 CPD ¶ 367 at 4. An offeror's mere disagreement with the agency does not render the evaluation unreasonable. McDonnell Douglas Corp., B-259694.2, B-259694.3, June 16, 1995, 95-2 CPD ¶ 51 at 18.

The RFP's SOO listed the following as objective (b):

Allow for future growth, additions to the network, and implementation of new technology as it becomes available.

RFP attachment 1, revision 2, at 1. In evaluating TCG's technical proposal under objective (b), the TEB found that, although TCG proposed the use of a

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<sup>3</sup>The adjectival ratings used by the agency in evaluating proposals were outstanding, highly satisfactory, satisfactory, marginal, and unsatisfactory.

synchronized optical network, or "backbone" network, with a relatively high speed which would provide "more than sufficient capacity for growth at major sites," it did not appear that this network would be dedicated for the Navy's exclusive use.<sup>4</sup> TEB Report at 26. In this regard, the TEB pointed out that TCG's proposal provided only that the Navy would "have equal and fair access to the backbone network." TCG proposal addendum A at 20. The agency concluded that because it may be sharing the network with other TCG customers, it may have to compete with those customers for additional space on the network as the agency's requirements increased. Because this could adversely affect the ability to expand the Navy's use of the network in the future, TCG's proposal was evaluated as only "satisfactory" under objective (b). The agency also noted here that TCG's proposal did not specify whether the additional capacity provided by its network would be made available to the Navy at any (or no) additional cost.

In contrast, the Navy found that, while Pacific Bell's technical solution provided less capacity initially, the capacity provided was more than adequate, and that Pacific Bell stated in its offer that it would expand the capacity to meet any future Navy requirements at no additional cost. The agency thus rated Pacific Bell's proposal as "highly satisfactory" under objective (b).

TCG contends that the agency's interpretation of its proposal was unreasonable. TCG claims in its protest that the network would be "dedicated to the exclusive use by the Navy," and that the statement in its proposal that the Navy would have "equal and fair access" to the network did not indicate otherwise. Protest at 2. TCG explains that it included the phrase "equal and fair access" because the RFP's SOO provided in its introduction that the MAN would "assist the Navy, as well as other government agencies." RFP attachment 1, revision 2, at 1. TCG points out that its proposal refers to five dedicated backbones that it had built for other federal customers, and that its proposal states that the network being proposed would "be supported by this type of infrastructure and architecture." TCG proposal addendum A at 18. TCG also contends that it did not specifically mention in its proposal whether additional capacity provided by its network would be made available to the Navy at no additional cost because TCG, as part of its business approach, "inherently must increase the capacity to accommodate services delivered, at our own expense." Protester's comments at 2. TCG concludes that the agency's interpretation of its proposal regarding the agency's access to the network and TCG's ability to meet the agency's future needs regarding expanded capacity was in error. TCG argues that, because of this, the agency's evaluation of its proposal was unreasonable and its conclusions as to the relative merits of Pacific Bell's proposal,

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<sup>4</sup>A synchronized optical network, or SONET, is a high-speed fiber optic network that is sometimes referred to as a "backbone." RFP annex B at 3; Agency Report at 13 n.2.

specifically regarding the additional bandwidth proposed by Pacific Bell, were unfounded.

We cannot find the agency's evaluation of TCG's proposal to be unreasonable. The statement in TCG's proposal that the agency would have "equal and fair access to the backbone network" can reasonably be interpreted only as providing that the user would have other than exclusive or dedicated access. Simply put, the phrase "equal and fair access" denotes that the access being offered will be shared "equally" with some other entity or entities (as opposed to being shared with other entities where certain users have either priority or subordinate access).

The fact that TCG mentioned elsewhere in its proposal that it had built five dedicated backbone networks for federal customers does not nullify or somehow qualify the meaning of the phrase "equal and fair access" so as to render the agency's interpretation of the phrase unreasonable. In this regard, the proposal refers to dedicated networks that TCG has built, and then states that the network being proposed here would be supported by the same infrastructure and architecture--it does not specify that access to the network would also be exclusive or dedicated. Moreover, even if the relevant subsection of TCG's proposal could be interpreted as clearly stating that TCG intended to provide a network dedicated to the Navy, or if it did contain additional language clearly stating as such, the subsection would at best be inconsistent with the succeeding subsection of TCG's proposal that specifically provided that the agency would have only "equal and fair access to the backbone network."

In sum, to the extent that TCG did intend to propose a backbone network "dedicated to the exclusive use by the Navy," the protester had the burden of clearly stating this in its proposal. It is an offeror's obligation to submit an adequately written proposal for the agency to evaluate, and in light of TCG's failure to fulfill its obligation in this regard, we see no basis to criticize this aspect of the agency's evaluation. GEC-Marconi Elec. Sys. Corp., B-276186, B-276186.2, May 21, 1997, 97-2 CPD ¶ 23 at 7. The same analysis applies to TCG's assertion that it did not specifically mention in its proposal that additional capacity provided by its network would be made available to the Navy at no additional cost because TCG, as part of its business approach, "inherently must increase the capacity to accommodate services delivered, at our own expense." Comments at 2. The protester has not pointed out where in its proposal there is any statement that would put the agency on notice of this "inherent" aspect of its approach. Accordingly, we have no basis to criticize this aspect of the agency's evaluation.<sup>5</sup>

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<sup>5</sup>TCG has made a number of other related contentions during the course of this protest having to do with the agency's evaluation of proposals and selection of Pacific Bell for award. Although these contentions may not be specifically  
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Finally, TCG challenges the agency's best value determination based upon its contention that the agency's evaluation of its proposal and consideration of the relative merits of Pacific Bell's proposal vis-à-vis TCG's proposal as evaluated were unreasonable. As explained above, we cannot find the agency's evaluation of TCG's proposals to be unreasonable. Because the agency in its award selection documentation reasonably explained why Pacific Bell's higher-rated proposal was worth its evaluated price premium, the protester's contentions here provide no basis for overturning the award.<sup>6</sup> Matrix Int'l Logistics, Inc., B-277208, B-277208.2, Sept. 15, 1997, 97-2 CPD ¶ 94 at 14; Hughes Georgia, Inc., B-272526, Oct. 21, 1996, 96-2 CPD ¶ 151 at 8.

The protest is denied.

Comptroller General  
of the United States

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<sup>5</sup>(...continued)

addressed in this decision, each was carefully considered by our Office and found either to be abandoned because the agency explained in detail the bases of its evaluation, insignificant in view of our other findings, or invalid based upon the record as a whole.

<sup>6</sup>TCG protests that the solicitation should have included a detailed statement of work (SOW), rather than a SOO because the SOO "favors the incumbent [Pacific Bell] because of familiarity, and is not in the best interest of the Navy." Protester's supplemental comments at 1. This contention, raised for the first time in the protester's comments on the agency report, is untimely. Our Bid Protest Regulations contain strict rules requiring the timely submission of protests. Under these rules, protests based upon alleged improprieties in a solicitation which are apparent prior to the time set for the receipt of proposals must be filed prior to that time to be considered by our Office. 4 C.F.R. § 21.2(a)(1) (1998). For the same reason, we will not consider TCG's contention that the agency should have set forth its actual requirements relating to the legacy local area network (LAN) interface in greater detail in the solicitation.

TCG also states that it has learned that the agency's requirements can be met by a less expensive solution than those proposed by TCG and Pacific Bell, and asserts that in performing the contract Pacific Bell will use this less expensive solution. The agency responds that Pacific Bell is providing the legacy LAN interfacing that it promised in its proposal, and that this approach meets the agency's requirements. To the extent TCG is arguing that the solicitation overstated the agency's requirements, this is an untimely challenge to the solicitation's terms; otherwise, this argument appears to question the administration of Pacific Bell's contract, which is outside our bid protest jurisdiction. 4 C.F.R. § 21.5(a).